

**BEFORE THE FEDERAL ELECTION COMMISSION**

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In the Matter of

**SENSITIVE**

Huckabee Election Committee (U.S. Senate)  
Prissy Hickerson, as treasurer  
Huckabee Election Committee  
Prissy Hickerson, as treasurer  
The Honorable Mike Huckabee

MUR 4317 and MUR 4323

**GENERAL COUNSEL'S REPORT**

**I. BACKGROUND**

On October 16, 1996, the Commission found reason to believe in MUR 4317 that the Huckabee Election Committee (U.S. Senate) and Prissy Hickerson, as treasurer, ("the Senate Committee") violated 2 U.S.C. § 441b by accepting a contribution from the Delta Beverage Group, Inc., and 2 U.S.C. § 434(b)(3)(A) by misreporting the sources of two contributions. In MUR 4323 the Commission found reason to believe that the Huckabee Election Committee and Prissy Hickerson, as treasurer, ("the State Committee") violated 2 U.S.C § 441b by making in-kind contributions to the Senate Committee using impermissible funds, that the Senate Committee violated 2 U.S.C. § 441b by accepting these in-kind contributions, and that the Honorable Mike Huckabee also violated 2 U.S.C. § 441b as a result of his involvement in certain of the activities at issue. Further, the Commission found reason to believe that the Senate Committee violated 2 U.S.C. § 434(b)(3)(A) by failing to identify fully all contributors itemized on its 1995 Year End Report.

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The respondents were informed of the Commission's determinations on October 31, 1996. A response by counsel on behalf of all of the above respondents was received on December 23, 1996, (Attachment 1), as were answers to interrogatories and requests for documents. (Attachment 2).

Counsel requests in both matters that the Commission find no probable cause to believe that violations have occurred or take no further action. In the alternative, counsel requests conciliation prior to findings of probable cause to believe. For the reasons set out in the following discussion, this Office recommends that the Commission enter into pre-probable cause conciliation with all of the respondents in this matter.

## **II. FACTUAL AND LEGAL ANALYSIS**

### **a. MUR 4317**

The Commission's reason to believe determination in MUR 4317 regarding a violation of 2 U.S.C. § 441b by the Senate Committee involves a contribution of \$1,000 received from a corporation, Delta Beverage Group, on August 22, 1995, but not refunded until March 1, 1996 and thus not within the thirty day period provided at 11 C.F.R. § 103.3(b)(1). The response submitted on behalf of the respondents admits this violation, but contends that it was the result of the Senate Committee's having mistakenly assumed that the contributor was a political action committee, as had been the sources of other contributions from the soft drink industry. (Attachment 1, page 3).

The complaint in this matter was received by the Commission on March 4, 1996 and the respondents were notified of the complaint on March 12. Thus, the refund of the corporate contribution at issue was made prior to the Senate Committee's receipt of the

complaint. This Office will take this fact into consideration during conciliation negotiations.

MUR 4317 also involves the Senate Committee's misreporting of two contributions in the amounts of \$500 each. These contributions were made by two partnerships, the Coca-Cola Bottling Company of Fort Smith and Hudson, Cisne, Keeling-Culp & Company, but were reported as having come from particular partners, namely Roger Meek and Richard Cisne, respectively.

The Senate Committee admits the reporting errors at issue, but cites "incorrect" information received from the contributors as the result of inquiries made by the committee which it then included in amendments to its reports. (Attachment 1, pages 1-2).

**b. MUR 4323**

The Commission's findings of reason to believe in MUR 4323 that the Senate Committee and the State Committee violated 2 U.S.C. § 441b involves a letter and an accompanying survey mailed by the State Committee in May, 1995, and also the payment by the State Committee of expenses involved in a trip to Washington, DC by then Lieutenant Governor Mike Huckabee and his assistant, Brenda Turner, in early August, 1995. In their response, the respondents argue that both of these were "solely non-federal activities."

# 1. Letter and Questionnaire

The State Committee's May, 1995 letter contained an appeal for funds to repay debts remaining from Mr. Huckabee's 1994 campaign for the office of Lieutenant Governor. (Attachment 2, pages 40-41). No mention is made of a prospective federal campaign in this letter. Included with the letter, however, was a document entitled "Arkansas Citizen Opinion Survey" which contained ten questions and which recipients were asked to complete and return to the State Committee with their contribution. (Attachment 2, pages 42-43). Question 9 on the survey contained the following language:

There has been much speculation about the open U.S. Senate seat which will be vacated in 1996 by Senator David Pryor. Do you think I should consider running for that office? Would you be willing to support the campaign if I ran?

The accompanying letter asked in a postscript that the recipients "take the time to answer the enclosed survey" and added, "I truly want to know your thoughts on these subjects!"

The respondents admit that the State Committee paid for the "debt retirement" letter and survey mailed in May, 1995, but argue that it was issued

for the purely non-federal purposes of retiring debt from the 1994 Lieutenant Governor's campaign and surveying constituents' opinions on a wide range of important state issues. As the Commission will see upon review of this mailing, neither the letter nor the survey ever advocates the election or defeat of Lieutenant Governor Huckabee as a Senate candidate, or solicits money for his Senate campaign in any way. Rather, the purpose of the mailing was to generate interest so potential donors would contribute to the Lieutenant Governor's debt-retirement efforts. The one question at issue out of a two-page, ten-question survey was important to Arkansas voters at the time it was asked. Moreover, the one brief question regarding the open U.S. Senate seat was a legitimate state issue receiving tremendous media attention at the time. Its inclusion in the general survey in no way transformed a strictly non-federal debt retirement mailing into a "testing the waters" activity. Likewise, the fact that the survey

posed some questions regarding issues that happened to have federal as well as state implications does not alter the fundamental non-federal nature or legitimacy of this mailing. Thus, Respondents maintain that the costs of this mailing were appropriately paid out of the state account.

(Attachment 1, pages 3-4)

The response to the Commission's reason to believe findings, and the answer to an interrogatory posed to the State Committee regarding expenditures to certain named vendors, state that the only costs associated with the May, 1995 mailing totaled \$2,824.83, which was paid to Griffith Enterprises in July, 1995. This payment assertedly covered 6,100 mail pieces and included the costs of postage, materials and labor.

(Attachment 2, page 4).

11 C.F.R. § 100.8(a)(1) defines "expenditure" as including the provision of "anything of value . . . for purposes of influencing any election for Federal office . . ." 11 C.F.R. § 100.8(a)(1)(iv)(A) defines "anything of value" as including in-kind contributions. 11 C.F.R. § 100.7(b)(1) and § 100.8(b)(1) exclude from the definitions of "contribution" and "expenditure" payments made "for the purpose of determining whether an individual should become a candidate;" however, if that individual later becomes a candidate, such contributions or payments become reportable. These same regulatory provisions include the conducting of a poll, travel and telephone costs as examples of such "testing-the-waters" activities.

11 C.F.R. § 106.4(e) provides several alternatives for allocating the costs of a poll among political committees benefited. One of the methods relevant to the present matter involves "dividing the overall cost of the poll equally among candidates (including State

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and local candidates) or political committees receiving the results . . . .” Another approved method would be a determination of the “proportion of the overall costs of the poll equal to the proportion that the number of question results received by the candidate or political committee bears to the total number of question results received by all candidates (including State and local candidates) and political committee . . . .” The regulations also provide for acceptance of “[an] amount computed by any other method which reasonably reflects the benefit derived.” 11 C.F.R. § 106.4(e)(2), (3) and (4).

In the present matter, the survey sent out by the State Committee in May, 1995, clearly contained one question which was designed to test the waters for Mr. Huckabee as a prospective federal candidate, regardless of whether the same question had non-federal implications. It also appears that the entire survey would have been beneficial to a Huckabee federal candidacy, as well as to his non-federal office. And, as is noted above, the letter which accompanied the questions explicitly encouraged responses to the survey. Thus, it is reasonable to deem the entire package allocable at least in part as an in-kind contribution made by the State Committee to the Senate Committee.

According to the respondents, the costs of the letter and survey totaled \$2,824.83. Based upon the assumption that all of the information gleaned from the survey would have been useful to the Senate Committee, the costs of the letter and survey should have been allocated equally between the State Committee and the Senate Committee, for a total of \$1,412.41 each.

The State Committee was free under Arkansas law to accept contributions from corporations, labor organizations, and/or banks. Therefore, the \$1,412 in federal election-

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related expenditures by the State Committee were made from an account which contained funds prohibited by federal law, placing both committees in violation of 2 U.S.C. § 441b.

## 2. Trip to Washington, DC

In its response to interrogatories, the State Committee states that it made the following expenditures in connection with the trip to Washington, DC on August 1-3, 1995, by Mr. Huckabee and Brenda Turner:

Goodwin Travel	Ticket for Brenda Turner	\$ 857
Citibank	Ticket for Mr. Huckabee	954
CNB	Petty cash	<u>350</u>
	Total	\$2,161

(Attachment 2, pages 6-7).

In their response to the Commission's findings of reason to believe, the respondents assert that "this trip was for the sole purpose of meeting with political consultant Richard Morris to discuss an outstanding debt for services provided during the 1994 Lt. Governor's race." The respondents further assert that the "initial plan was to meet with Mr. Morris in Arkansas," but that "Washington, DC was chosen as a convenient alternative site only after certain political realities made it difficult for Morris to travel to Arkansas, thereby precluding any possibility of a pre-meditated 'testing the waters' outing." (Attachment 1, page 4).

The response to the Commission's reason to believe determinations does not address specifically the meetings with Republican Party leaders, including representatives of the National Republican Senatorial Committee ("NRSC"), which were cited in the

newspaper articles attached to the complaint in this matter, and which were acknowledged to have taken place by Brenda Turner in her affidavit submitted in response to the complaint. Rather, the response includes the general statement that

"Lt. Governor Huckabee never engaged in any activities while in Washington that would meet the definition [of 'testing the waters']." (Attachment 1, page 5). The response goes on to assert: "The fact that Mr. Huckabee was asked informally, and not on his own volition, about the open U.S. Senate seat in Arkansas does not automatically transform his trip into a 'testing the waters' effort as suggested by the Commission."

(Attachment 1, page 5).

The fact that the August, 1995 trip to Washington, DC involved, in part, a consultation about a 1994 debt suggests that a portion of the costs of the trip has legitimately been allocated to non-federal activity. On the other hand, despite the denials of testing-the-waters activity, other factors point to more than just debt reduction as an outcome of this trip. These other factors include the submission by the Huckabee Exploratory Committee (U.S. Senate) of its Statement of Organization to the Secretary of the Senate on August 15, 1995, and thus shortly after the trip; the admission that visits by Mr. Huckabee with national party representatives did take place; and the lack of specificity in the responses as to the subject matter of those visits, particularly the one with NRSC representatives whose role it is to assist with campaigns for the U.S. Senate. These factors lead to a conclusion that a portion of the trip should have been allocated to federal election activity. Additional investigation would be necessary to establish an exact



percentage; however, a 50-50 allocation would appear to be equitable, resulting in a federal share of \$1,080.

### **3. Other Federal Activities**

The complaint in this matter cited the fundraising letter and survey and the trip to Washington, DC as specific instances of allegedly federal expenditures made by the State Committee in 1995. However, the complaint also contains more general statements indicating possible use of other State Committee monies to benefit Mr. Huckabee's potential federal campaign. Further, as noted in materials submitted with the complaint, a response by the Arkansas Ethics Commission to a request by then-Lieutenant Governor Mike Huckabee that it examine his State Committee's records had been critical of the State Committee's having raised \$91,825 dollars to pay off 1994 debts which initially totaled only \$35,161. This figure was subsequently reduced to \$16,996 by Richard Morris' forgiveness of the \$15,000 debt owed to him and by the discovery that \$3,100 in debts had already been paid. The Ethics Commission report had also been critical of the State Committee's "large administrative costs in connection with debt retirement . . . ."

Because of the general information contained in the complaint, and the information contained in the findings of the Arkansas Ethics Commission regarding State Committee debts and expenditures, questions were posed by this Office to the State Committee concerning the purposes of a number of expenditures which were reported to the Ethics Commission as having been made between May and September, 1995. These questions focused particularly upon expenditures to credit card companies, and upon expenditures seemingly related to fundraising or to other, possibly campaign-related activity.

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The responses submitted by the State Committee to these questions, together with the information contained in the State Committee's reports for May-September, 1995 and the figures compiled by the Arkansas Ethics Commission, have produced the following approximate picture of the State Committee's financial activity between May 1, 1995, the earliest date under Arkansas law that the State Committee could have raised post-election contributions to pay off 1994 debts, and October 12, 1995, the date of Mr. Huckabee's registration as a candidate for the U.S. Senate.

State Committee Income

\$91,825.50

State Committee Expenditures

Payment of Debts	\$16,996 <sup>1</sup>
Fundraising	23,884 <sup>2</sup>
"Routine Office Expenses"	782 <sup>3</sup>
Travel	8,835 <sup>4</sup>

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<sup>1</sup> This is the figure established by the Arkansas Ethics Commission as the total of 1994 debts owed by the Committee.

<sup>2</sup> This approximate and possibly generous figure for fundraising includes, *inter alia*, direct mail costs, one-half of the State Committee's salary payment of \$10,545.99 to Brenda Turner in May, 1995, per the Arkansas Ethics Commission report; one-half of her June salary payment of \$2,510.95; and the full amounts of telephone bills paid in May and June.

<sup>3</sup> "Routine office expenses" is the phrase used by respondents to describe certain expenditures made for postage and printing in July, 1995.

<sup>4</sup> This figure includes \$5,545 in expenditures for travel within the state of Arkansas in 1995 which have been identified by respondents, and the \$2,161 spent for the trip to Washington, DC.

Contributions and Gifts	1,719 <sup>5</sup>
Utilities & Equip.	\$ 4,159 <sup>6</sup>
Salaries	14,685 <sup>7</sup>
Taxes	8,073
Unitemized	2,182

One of these categories of expenditures, that for "travel," includes more than \$5,500 spent for trips within the state of Arkansas in May, June, July and September, 1995. The State Committee has stated, in its response to interrogatories, that these expenditures for intra-Arkansas travel involved "various trips to stay in touch with constituents and attend various Arkansas Republican Party events, none of which were fundraisers or federal campaign-related events." (Attachment 2, pages 8-9). However, in light of the evidence in the May, 1995 survey that Mr. Huckabee was at that time contemplating a federal campaign, and given the registration of his exploratory committee in August, 1995, it is difficult to divorce entirely Mr. Huckabee's appearances at party events in the spring and summer of 1995 from his pending federal campaign. Other large, seemingly non-fundraising or otherwise 1994 debt-related expenditures include the more than \$4,840 expended for "routine office" activities (\$782) and for utilities and equipment (\$4,159) in July, and the \$14,685 in apparently non-fundraising salaries paid between May and September. The total of these particular categories of expenditures is approximately \$25,000.

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<sup>5</sup> This category includes contributions to the Republican Party of Arkansas, to a television station, and to the Miller County Republican Party.

<sup>6</sup> This amount represents expenditures in July, 1995, for business equipment, telephone bills, and office supplies.

<sup>7</sup> This category includes the approximate non-fundraising portion of the salary paid Brenda Turner, plus smaller payments to a second individual.

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Given the concerns of the Ethics Commission about expenditures by the State Committee which were not supported by that committee's debt situation, the question in the May survey about a federal campaign, and the registration of Mr. Huckabee's exploratory committee in August, 1995, it appears that a portion of the \$25,000 cited above was spent by the State Committee for activity which served to test the waters for Mr. Huckabee's eventual federal campaign. These activities resulted in in-kind contributions by the State Committee to the Senate Committee. Additional inquiries would be needed to establish an exact figure for such in-kind contributions; however, because of the Commission's limited resources and the amounts involved, this Office does not recommend further investigation. Rather, this Office has included in the proposed conciliation agreement violations of 2 U.S.C. § 441b arising from a portion of the \$25,000 in State Committee expenditures discussed above which were made from accounts containing impermissible funds. An equitable figure for the federal share of these State Committee expenditures would be \$12,500, or one-half of the \$25,000.

**d. MUR 4323 - Best Efforts**

The Commission also found reason to believe that the Senate Committee violated 2 U.S.C. § 434(b)(3)(A) by failing to identify fully all contributors itemized in its 1995 Year End Report. As of its May 10, 1996 amendment to this report, 11.5% of the itemized contributors were missing information regarding occupations and places of business. The Senate Committee argues in its response to the Commission's reason to believe determination that it has met the "best efforts" standard established at 11 C.F.R. § 104.7(b)(2).

The Senate Committee, both earlier and in response to the Commission's reason to believe determination, has provided copies of two form letters assertedly sent to contributors requesting such missing information. (Attachment 2, page 45-46). These form letters are not dated, and thus they do not indicate how soon after receipt of the contributions they were mailed out, i.e., whether they were mailed within 30 days of receipt of the contributions as required by 11 C.F.R. § 104.7(b)(2). However, given the existence of these letters and the Senate Committee's reduction of its failure rate with regard to the Year End Report from 16.2% to the present 11.5%

### **III. DISCUSSION OF PROPOSED CONCILIATION PROVISIONS AND CIVIL PENALTY**

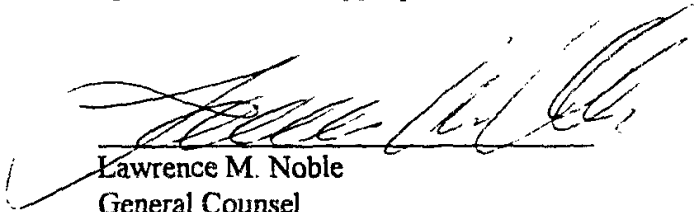
This Office recommends that the Commission enter into preprobable cause conciliation with all of the respondents and approve the attached proposed conciliation agreement.

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**IV. RECOMMENDATIONS**

1. Enter into conciliation prior to a finding of probable cause to believe with the Huckabee Election Committee (U.S. Senate) and Prissy Hickerson, as treasurer; the Huckabee Election Committee and Prissy Hickerson, as treasurer; and The Honorable Mike Huckabee.
2. Approve the attached conciliation agreement and the appropriate letter.

Date

4/9/97  
Lawrence M. Noble  
General Counsel**Attachments**

1. Response to reason to believe determinations
2. Answers to Interrogatories and Requests for Documents
3. Proposed conciliation agreement

Staff Assigned: Anne Weissenborn




FEDERAL ELECTION COMMISSION

Washington, DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE  
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE ROSS   
COMMISSION SECRETARY

DATE: APRIL 15, 1997

SUBJECT: MURs 4317 and 4323 - General Counsel's Report

The above-captioned document was circulated to the Commission  
on Thursday, April 10, 1997.

Objection(s) have been received from the Commissioner(s) as  
indicated by the name(s) checked below:

Commissioner Aikens	<b>XXX</b>
Commissioner Elliott	<b>XXX</b>
Commissioner McDonald	—
Commissioner McGarry	—
Commissioner Thomas	—

This matter will be placed on the meeting agenda for  
Wednesday, April 23, 1997.

Please notify us who will represent your Division before the Commission on this  
matter.

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